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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,889	03/04/2002	Natalie Rose Noel	NRN-001	6465

7590
Dane C. Butzer
681 Woodduck Ct.
Columbus, OH 43215

07/31/2003

EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 07/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/090,889

Applicant(s)
Noel

Examiner
Gloria Hale

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3765



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stack (2723396) in view of Hyman (3968803).

In regard to claims 1,6,10-12, 19 and 21, Stack discloses a restraint that reduces breast movement, is elastic and inelastic as claimed and which fits about a wearer as claimed. However, the fastener of Stack is not adjustable. Hyman discloses a chest restraint with an adjustable fastener, hook and loop material, 30,32, as claimed to provide an adjustable fit on the wearer. (See Stack, figure 1 and cols. 1-2) Nothing precludes the Stack embodiment of figure 1 as being reversed with the fastener in the rear. The statement in the claims that it "is disposed to be positioned" is a broad statement wherein the Stack restraint is wearable in the ~~wear~~ ^{on} wear. (See Stack, fig. 1 and cols. 1-2 and Hyman, figures 1 and 2 and col 4.) Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the restraint of Stack to include an adjustable hook and loop fastener in order to better fit the restraint on the wearer and to provides the exact amount of tension about the breasts. In regard to claims

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2 and 3 the Stack restraint is sized as claimed. In regard to claims 4,5,and 13-15, Stack and Hyman disclose the invention substantially as claimed and as discussed above in regard to claim 1. Additionally, Hyman discloses the strap as being wider at the tops of the breasts as claimed and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the elastic of Stack which is of a single elastic material to structure it wider at the breast area as disclosed by Hyman in order to better cover the breasts of the wearer. In regard to claims 7,16,20 and 22, nothing in Stack precludes it from being worn with a bra if a wearer desires. In regard to claim 8, Stack incorporates a bra 30 as claimed and as seen in Figure 3 of Stack. In regard to claims 9 and 17, Stack discloses in the embodiment of figure 3 that it is a bra which is wearable as a sports bra.

Response to Arguments

3. Applicant's arguments with respect to claim 1-18 have been considered but are moot in view of the new ground(s) of rejection.

The new grounds of rejection nullify the objection of claims 4 and 13 in the previous action.

The present claims are extremely broad and applicant's present invention is only an elastic tourniquet type restraint which is included in the cited references and is wearable about the chest of a wearer. See Speelman et al (4384583 col. 1, line 58-col. 2,line10).

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is (703) 308-1282.


Gloria Hale

Primary Patent Examiner- AU 3765

July 27, 2003